Remarks:

Reconsideration of the application is respectfully requested in view of the foregoing amendments and following remarks. Claims 1-29 and 31-46 are pending in the application. No claims have been allowed. Claims 1, 16, 20, 22, 23, 29, 44, and 46 are independent. Claims 1-4, 12, 13, 16, 20, 23, 29, 44, and 46 have been amended. Claim 30 has been canceled without disclaimer or prejudice to renewal.

Independent claim 22 has not been amended. Accordingly, "a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art." MPEP § 706.07(a).

Interview

Applicants thank the Examiner for his time during the telephonic interview on February 23, 2006. During the interview, claim 1, the Radigan reference, and potential § 101 issues were discussed. Applicants believe that the interview was helpful and now present amended claims for further consideration.

IDS References Not Considered

Applicants submitted a number of IDS references in accordance with 37 CFR 1.97 and 1.98. However, while the majority of the IDS references were considered, two of the IDS references apparently were not considered (they were not initialed by the Examiner). The following is a list of the two IDS references that were apparently not considered:

IDS Dated	Reference
7/28/2004	"Common Language Infrastructure (CLI), Partition 1: Concepts and Architecture," ECMA TC39/TG3, Section 11.6, pages 1-103, October 2002.
7/28/2004	"The LEX & YACC Page," http://dinosaur.compilertools.net/, 4 pages, website visited on June 16, 2003.

Applicants submit herewith Exhibit A, a postcard indicating that the references were received. Applicants respectfully request that the Examiner initial the appropriate boxes to indicate consideration of the two above-referenced IDS references that were submitted in accordance with procedure specified by 37 CFR 1.97 and 1.98. *See also* MPEP § 609 ("An information disclosure statement filed in accordance with the provisions of 37 CFR 1.97 and 37 CFR 1.98 will be considered by the examiner assigned to the application.").

Cited Art

The Action cites U.S. Patent Application No. 2004/0098710 to Radigan ("Radigan").

102 Rejection

Patentability of Claims 1-46 over Radigan under § 102(e)

The Action rejects claims 1-46 under 35 U.S.C. § 102(e) as being anticipated by Radigan. Applicants respectfully submit that the claims in their present form are allowable over the cited art. To establish a prima facie case of anticipation, the cited art must show each and every element as set forth in a claim. MPEP § 2131.01.

Claim 1

Claim 1 has been amended to clarify that the instructions are represented "using a single uniform format for both the instructions represented in the machine-dependent manner and the instructions represented in the machine-independent manner." Amended claim 1 reads as follows (emphasis added):

> One or more computer-readable media having encoded thereon computer executable instructions for performing a method to generate an intermediate representation of software, the method comprising:
> storing, in a data structure, a plurality of instruction nodes representing a plurality of instructions of the software;
> wherein the instruction nodes are operable to represent the instructions in a machine-dependent manner and are further operable to represent the instructions in a machine-independent manner, *using a single uniform format for both the instructions represented in the machine-dependent manner and the instructions represented in the machine-independent manner.*

For example, the Application at page 10, line 8 to page 12, line 2 describes a single uniform format for representing machine-dependent and machine-independent instructions.

Radigan's description of a "machine independent component" does not anticipate "wherein the instruction nodes are operable to represent the instructions in a machine-dependent manner and are further operable to represent the instructions in a machine-independent manner, using a single uniform format for both the instructions represented in the machine-dependent manner and the instructions represented in the machine-independent manner" of claim 1.

Radigan describes a "reader" that reads an intermediate language (IL). Radigan, paragraph 006. Radigan describes that the reader makes a first pass to build a connected flow graph, and a second pass to translate the IL into machine code based on the flow graph nodes. Radigan, paragraph [006]. Radigan also describes that a "machine independent component can be easily re-targeted for many different processors" because the reader may be used by a "JIT for many different platforms." Radigan, paragraphs [0003] and [0004].

While Radigan describes that certain aspects of an IL can be represented by flow graph nodes, Radigan does not describe instruction nodes "wherein the instruction nodes are operable to represent the instructions in a machine-dependent manner and are further operable to represent the instructions in a machine-independent manner, using a single uniform format for both the instructions represented in the machine-dependent manner and the instructions represented in the machine-independent manner" as recited by claim 1. Just because Radigan describes that a "machine independent component can be easily re-targeted" does not mean that Radigan describes "using a single uniform format for both the instructions represented in the machine-dependent manner and the instructions represented in the machine-independent manner." In fact, Radigan lacks any description of a single format for representing instructions in both machine-dependent and machine-independent manners.

Because Radigan does not describe the above-quoted language of claim 1, Radigan does not anticipate claim 1. Therefore, claim 1 should be in condition for allowance.

Claim 16

Claim 1 has been amended, in part, to clarify "wherein the single format is operable to represent instructions of the intermediate representation in a machine-dependent manner and a

machine-independent manner." For at least the reasons discussed above with regard to claim 1,
Radigan dose not anticipate the language of amended claim 16. Therefore, claim 16 should be in
condition for allowance.

Claim 20

Claim 20 has been amended, in part, to clarify "wherein the plurality of instruction nodes
are operable to represent the plurality of instructions in a machine-dependent manner and are
further operable to represent the plurality of instructions in a machine-independent manner using
a single uniform format for both the plurality of instructions represented in the machine-
dependent manner and the plurality of instructions represented in the machine-independent
manner." For at least the reasons discussed above with regard to claim 1, Radigan dose not
anticipate the language of amended claim 20. Therefore, claim 20 should be in condition for
allowance.

Claim 22

Claim 22 recites, in part, "wherein the means for representing is of a single format
operable to represent the software in a machine-independent and a machine-dependent manner."
For at least the reasons discussed above with regard to claim 1, Radigan dose not anticipate the
language of claim 22. Therefore, claim 22 should be in condition for allowance.

Claim 23

Claim 23 has been amended to clarify "wherein the intermediate representation is of a
single format." Claim 23 also recites "wherein the single format is operable to represent the
software in a machine-dependent and a machine-independent manner." For at least the reasons
discussed above with regard to claim 1, Radigan dose not anticipate the language of claim 23.
Therefore, claim 23 should be in condition for allowance.

Claim 29

Claim 29 has been amended to clarify that "the data structure stores an intermediate
representation of software using a single uniform format to represent both a machine-dependent
and a machine-independent form of the software." For at least the reasons discussed above with

regard to claim 1, Radigan dose not anticipate the language of amended claim 29. Therefore, claim 29 should be in condition for allowance.

Claim 44

Claim 44 has been amended to clarify that the single format is "operable to represent each instruction and data element of the software in a machine-independent and a machine-dependent manner." For at least the reasons discussed above with regard to claim 1, Radigan dose not anticipate the language of amended claim 44. Therefore, claim 44 should be in condition for allowance.

Claim 46

Claim 46 has been amended to clarify "wherein the software development tools are operable to generate or analyze an intermediate representation of software of a single format operable to represent software in a machine-independent and a machine-dependent manner." For at least the reasons discussed above with regard to claim 1, Radigan dose not anticipate the language of claim 46. Therefore, claim 46 should be in condition for allowance.

Dependent Claims

Various dependent claims have been amended to correspond with amendments to their respective independent claims.

For at least the reasons discussed above with regard to their corresponding independent claims, the dependent claims should be in condition for allowance.

Request for Interview

If any issues remain, the Examiner is formally requested to contact the undersigned attorney prior to issuance of the next Office Action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Amendment so that the Examiner may fully evaluate Applicants' position, thereby enabling the interview to be more focused.

This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

Conclusion

The claims in their present form should now be allowable. Such action is respectfully

requested.

Respectfully submitted,

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EXHIBIT

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